

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MELESSA A. ROSA,

08 CIV. 5459 (JSR)

Plaintiff,

VERIFIED ANSWER

-against-

JENNIFER L. LUXENBERG,

Defendant.

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Defendant, JENNIFER L. LUXENBERG, by her attorneys, MEAD, HECHT, CONKLIN & GALLAGHER, LLP, answering the plaintiff's complaint, respectfully alleges upon information and belief:

FIRST: Defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "1" and "18" of the plaintiff's complaint and respectfully refers all questions of law to the Court.

SECOND: Defendant denies each and every allegation contained in paragraphs designated "2", "3" and "4" of the plaintiff's complaint and respectfully refers all questions of law to the Court.

THIRD: Defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "5", "6", the first paragraph designated "7", the second paragraph designated "7", the first paragraph designated "8", the second paragraph designated "8", "9", "10", "11", "12", the first paragraph designated "13" and "19" of the plaintiff's complaint.

FOURTH: Denies each and every allegation contained in the second paragraph designated "13" and paragraphs designated "14", "15", "16" and "17" of the plaintiff's complaint.

FIRST AFFIRMATIVE DEFENSE

FIFTH: As and for a first affirmative defense, this answering defendant alleges that the plaintiff's injuries and/or damages were caused in whole or in part by plaintiff's own culpable conduct, contributory negligence and/or assumption of risk, and plaintiff's claims are therefore barred or diminished to the extent that such culpable conduct, contributory negligence and/or assumption of risk contributed to the occurrence and the injuries and/or damages claimed therefrom.

SECOND AFFIRMATIVE DEFENSE

SIXTH: As and for a second affirmative defense, this answering defendant alleges that the causes of action as alleged in the plaintiff's complaint are barred by reason of failure to comply with and satisfy the requirements of Section 5102, The Comprehensive Automobile Insurance Reparations Act of the Insurance Law of the State of New York.

THIRD AFFIRMATIVE DEFENSE

SEVENTH: As and for a third affirmative defense, this answering defendant alleges that defendant's liability is limited pursuant to CPLR section 4545.

FOURTH AFFIRMATIVE DEFENSE

EIGHTH: As and for a fourth affirmative defense, this answering defendant alleges that by failing and neglecting to exercise ordinary care and making use of available seat belts, plaintiff acted unreasonably and in disregard of her own best interests, and that all or a portion of the injuries she sustained could have been eliminated or minimized by the exercise of reasonable conduct in using the available seat belts.

FIFTH AFFIRMATIVE DEFENSE

NINTH: As and for a fifth affirmative defense, this answering defendant alleges

that the Court lacks jurisdiction of the person of the defendant, JENNIFER L. LUXENBERG, in that said defendant has never been properly served with the summons and complaint, and said defendant does not waive any defense by appearing in this action.

SIXTH AFFIRMATIVE DEFENSE

TENTH: The action should be dismissed pursuant to the doctrine of forum non conveniens.

SEVENTH AFFIRMATIVE DEFENSE

ELEVENTH: Venue should be transferred to California for the convenience of the parties and witnesses, in the interest of justice pursuant to 28 U.S.C. 1404.

WHEREFORE, the defendant, JENNIFER L. LUXENBERG, demands judgment against the plaintiff, dismissing the complaint together with the costs and disbursements of this action.

Dated: Mamaroneck, New York
June 18, 2008

Yours, etc.,

MEAD, HECHT, CONKLIN & GALLAGHER, LLP
Attorneys for Defendant - JENNIFER L. LUXENBERG


By: Sara Luca Salvi, Esq.
109 Spencer Place
Mamaroneck, New York 10543
(914) 899-3100
Our File No. 028-03-7424

TO: BADER YAKAITIS & NONNENMACHER, LLP
Attorneys for Plaintiff
350 Fifth Avenue, Suite 7210
New York, New York 10118
(212) 465-1110

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MELESSA A. ROSA,

Plaintiff,

08 CIV. 5459 (JSR)

-against-

VERIFICATION

JENNIFER L. LUXENBERG,

Defendant.

-----X

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

I, the undersigned, am an attorney admitted to practice in the Southern District of New York and say that:

I am associated with the firm of MEAD, HECHT, CONKLIN & GALLAGHER, LLP, the attorneys of record for the defendant, JENNIFER L. LUXENBERG, and have read the annexed Answer, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters, I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the information and investigation contained in the file maintained by my office.

The reason that I make this affirmation instead of defendant is that defendant, JENNIFER L. LUXENBERG, does not maintain an office nor resides in the County where our offices are maintained, to wit: Westchester County.

I affirm that the foregoing statements are true under penalties of perjury.

Dated: Mamaroneck, New York
June 18, 2008


By: Sara Luca Salvi, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MELESSA A. ROSA,

08 CIV. 5459 (JSR)

Plaintiff,

AFFIDAVIT OF SERVICE

-against-

JENNIFER L. LUXENBERG,

Defendant.

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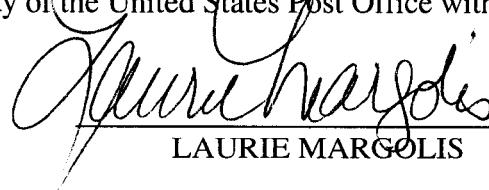
STATE OF NEW YORK)
ss.:
COUNTY OF WESTCHESTER)

LAURIE MARGOLIS, being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides at Mamaroneck, New York.

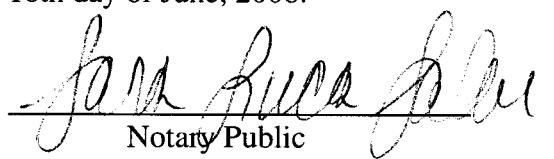
That on the 18th day of June, 2008, deponent served the within Verified Answer upon:

BADER YAKAITIS & NONNENMACHER, LLP
Attorneys for Plaintiff
350 Fifth Avenue, Suite 7210
New York, New York 10118

by depositing the same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.


LAURIE MARGOLIS

Sworn to before me this
18th day of June, 2008.


SARA LUCA SALVI
Notary Public

SARA LUCA SALVI
Notary Public, State of New York
No. 02SA6082576
Qualified in Westchester County
Commission Expires 10/28/10